

OPEN MEETING ITEM



0000094629

COMMISSIONERS
KRISTIN K. MAYES – Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



RECEIVED

MICHAEL P. KEARNS
Interim Executive Director

ORIGINAL

ARIZONA CORPORATION COMMISSION

2009 MAR 16 P 1:11

AZ CORP COMMISSION
DOCKET CONTROL

DATE: MARCH 16, 2009

DOCKET NO: W-01384A-08-0048

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Order on:

THE DELLS WATER COMPANY, INC.
(FINANCING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

MARCH 25, 2009

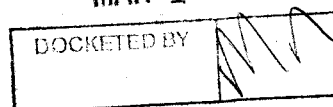
The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

MARCH 31, 2009 and APRIL 1, 2009

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKETED

MAR 16 2009



MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION
9 OF DELLS WATER COMPANY, INC. FOR
10 FINANCING APPROVAL.

DOCKET NO. W-01384A-08-0048

11 DECISION NO. _____

12 **ORDER**

13 Open Meeting
14 March 31 and April 1, 2009
15 Phoenix, Arizona

16 **BY THE COMMISSION:**

17 On January 25, 2008, Dells Water Company, Inc. ("Company" or "Applicant") filed with the
18 Arizona Corporation Commission ("Commission") an application requesting authorization to incur
19 long-term debt for a \$30,000 loan to fund two new 10,000 gallon storage tanks ("Application"). In
20 conjunction with its Application, the Company requested Commission approval to impose a \$3.35 per
21 customer per month surcharge to repay the proposed long-term debt.

22 On January 15, 2009, the Commission's Utilities Division ("Staff") filed its Staff Report
23 which recommends approval of the Company's Application to incur long-term debt. However, Staff
24 specifically recommended the denial of the Company's proposed surcharge to satisfy the repayment
25 of the long-term debt.

26 On January 26, 2009, the Company filed objections to Staff's recommendation that the
27 Company's proposed surcharge be denied and maintained that it believed that the surcharge would be
28 necessary.

Because it was not clear whether the Company wished to continue with this Application
without approval of the proposed surcharge, on January 28, 2009, a Procedural Order was issued
requiring the Company to file a response indicating whether the Company wished further

1 Commission action on Staff's recommendation that the Application for long-term debt be approved
2 and the requested surcharge be denied.

3 On February 2, 2009, the Company filed its response indicating that it wished to proceed with
4 its Application for long-term financing approval and further indicated that the Applicant would file a
5 rate application wherein the proposed surcharge could be evaluated.

6 * * * * *

7
8 Having considered the entire record herein and being fully advised in the premises, the
9 Commission finds, concludes, and orders that:

10 **FINDINGS OF FACT**

11 1. Pursuant to authority granted by the Commission, Applicant is an Arizona Corporation
12 engaged in the business of providing water service to approximately 75 customers in Yavapai County
13 outside of Prescott, Arizona.¹

14 **Decision No. 70102**

15 2. The Company's present rates and charges were approved in Decision No. 70102
16 (December 21, 2007), but the rates were not to become effective until the first day of the month
17 following the filing of a copy of an agreement to pay current and delinquent property taxes between
18 the Company and the Yavapai County Treasurer's Office. Subsequently, on February 1, 2008, the
19 Company filed a copy of a letter from the Yavapai County Treasurer's Office, dated January 29,
20 2008, which indicated that all back taxes for the Company had been paid in full through the end of
21 the 2007 calendar year.

22 3. An additional condition of Decision No. 70102 required the Company to notify its
23 customers of the new water rates and charges and their effective date by means of an insert in the
24 monthly billing which preceded the month in which they became effective. The Company was
25 further ordered to file a copy of the notice sent to its customers with the Commission's Docket
26

27 ¹ The Company is owned by the Glenarm Land Company, Inc. ("Glenarm") which also owns the Wilhoit Water Company
28 ("Wilhoit"). Wilhoit owns three other public water systems which provide water in the following areas: Thunderbird
Meadows in the vicinity of Wilhoit; Yavapai Mobile Home Estates in the vicinity of Chino Valley; and Blue Hills No. 3
in the vicinity of Dewey, Arizona.

1 Control when the customer notice was mailed.

2 4. With its April 2008 billing, the Company mailed its customers notice of its new rates
3 and charges which would become effective on May 1, 2008, but failed to file a copy of the customer
4 notice of the rate increase with the Commission's Docket Control at that time.²

5 **Finance Application**

6 5. On January 25, 2008, the Company filed an Application in the above-captioned docket
7 requesting Commission approval to incur long-term debt in the amount of \$30,000 to pay for the cost
8 of two new 10,000 gallon storage tanks. With its Application, the Company is seeking the
9 Commission's approval to borrow up to \$30,000 from the Arizona Water Infrastructure Authority
10 ("WIFA") for a period not to exceed 20 years, at an interest rate to be determined when the loan is
11 funded. Included with the Company's long-term financing Application was a request for the
12 Commission to approve the imposition of a \$3.35 surcharge per customer per month as a means to
13 repay the proposed long-term debt.

14 6. The Application herein for long-term financing approval for additional storage grew
15 out of Decision No. 70102, wherein the Commission found that the Company had inadequate storage
16 to serve its existing customers. Decision No. 70102 also required that the Company file by
17 December 31, 2008, with the Commission's Docket Control, a copy of the Arizona Department of
18 Environmental Quality's ("ADEQ") Certificate of Approval of Construction ("AOC") for the
19 additional plant to increase storage capacity.

20 7. On June 4, 2008, Applicant published notice of its Application in this matter in a
21 newspaper of general circulation in Prescott, Arizona.

22 8. On January 15, 2009, Staff filed its report recommending approval of the Company's
23 Application to obtain a loan from WIFA, in an amount not to exceed \$30,000, for a term of 18 to 22
24 years and with an interest rate not to exceed 6.75 percent per annum.

25 9. Staff's recommended denial of the request for approval of the \$3.35 surcharge was
26 based upon Staff's projection that the Company's current rates will generate sufficient operating

27 _____
28 ² On March 3, 2009, the Company filed a copy of the notice which it had mailed to its customers in April 2008, informing them of its new rates and charges.

1 income and cash flow to enable the Applicant to service the proposed debt of \$30,000 and to meet
2 current obligations. Staff stated that consideration of a rate increase, including the proposed
3 surcharge, must take place in a rate proceeding.

4 10. Staff projected that the Company's current rates authorized in Decision No. 70102
5 would generate \$4,174 of operating income and would provide the Company with a 15.18 percent
6 operating margin to enable it to meet its obligations.

7 11. Staff's engineering section reviewed the proposed plant improvements and related
8 costs and stated that the estimated project costs provided by the Company appear to be reasonable
9 and appropriate for the additional storage facilities. However, Staff indicated that it was not making
10 any "used and useful" determination from which any conclusions should be inferred for rate making
11 or rate-base purposes.

12 12. When the Company initially filed its Application for Commission approval of long-
13 term debt, it did not believe it had sufficient cash or operating revenue to fund the installation of the
14 additional storage facilities based on what it believed was a \$3,732 net loss for the year ending
15 December 31, 2007, based on an unaudited income statement. Staff stated the Company's net loss
16 calculation did not accurately reflect its current financial position because the new rates authorized in
17 Decision No. 70102 were projected to produce \$4,174 of annual operating income.

18 13. According to the Staff Report, as of December 31, 2007, the Company had a capital
19 structure consisting of 68.5 percent of short-term debt, 20.4 percent of long-term debt and 11.1
20 percent equity. Staff indicated that the Company's capital structure included \$8,721 of combined
21 short-term and long-term debt which had not been authorized by the Commission, was not evidenced
22 by any loan documents, and did not have a stated interest rate or repayment schedule. As a result,
23 Staff's capital structure reflects both the short-term and the long-term debt reclassified as equity.

24 14. Staff projects that a *pro forma* capital structure which reflects a drawdown of the
25 entire proposed \$30,000 in long-term debt will result in the Company having a capital structure of 2.5
26 percent short-term debt, 72.8 percent long-term debt and 24.6 percent equity. Staff stated that a
27 capital structure of an investor-owned utility with less than 40 percent equity is considered to be
28 highly leveraged, which could result in difficulties in obtaining future financing. However, in this

1 case, Staff believes that the need for additional storage should have priority over short-term leverage
2 concerns.³

3 15. The Debt Service Coverage ("DSC") ratio represents the number of times internally
4 generated cash will cover required principal and interest payments on long-term debt. A DSC ratio
5 greater than 1.0 indicates that operating cash flow is sufficient to cover debt obligations. A DSC less
6 than 1.0 means that debt service cannot be met from operations and that another source of funds is
7 needed to avoid default.

8 16. The Times Interest Earned Ratio ("TIER") represents the number of times earnings
9 will cover interest expense on short-term and long-term debt. A TIER great than 1.0 means that
10 operating income is greater than interest expense. A TIER of less than 1.0 is not sustainable in the
11 long term, but does not necessarily mean that debt obligations cannot be met in the short-term.

12 17. Staff analyzed the Company's *pro forma* impact of drawing down the proposed
13 \$30,000 in long-term debt, and found that it results in a TIER of 3.86 and a DSC of 2.67 which
14 indicate that the Company will have adequate cash flow to meet its obligations.

15 18. Staff indicated in its report that the Company is out of compliance with Decision No.
16 70102, because it failed to file a copy of the ADEQ AOC for its storage tank improvements by
17 December 31, 2008. On January 28, 2009, the Company filed a request for an extension of time to
18 meet this requirement of Decision No. 70102 (see Staff recommendation below).

19 19. Staff further indicates in its report that the Company has no outstanding complaints
20 against it and it is in good standing with the Commission's Corporations Division as of December 30,
21 2008.

22 20. Staff's Engineering Report indicates that the Company is providing water which meets
23 the requirements of the Safe Drinking Water Act.

24 21. Based on Staff's review and analysis, Staff concluded that the proposed financing as
25 recommended by Staff is for lawful purposes, within the Company's powers as a corporation,
26 compatible with the public interest, consistent with sound financial practices and will not impair its
27

28 ³ Staff points out that the debt service reserve provisions of a WIFA loan serve as an equity growth plan to mitigate the leverage concerns in this instance.

1 ability to provide public service. Staff further recommended:

- 2 • that the Commission approve the Company entering into a long-term loan with WIFA for
3 a period not to exceed 22 years in an amount not to exceed \$30,000 and at a rate of
4 interest not to exceed 6.75 percent per annum for the purchase and installation of water
5 storage facilities;
- 6 • that the Company be granted an extension of time to file, by December 31, 2009, with the
7 Commission's Docket Control, as a compliance item in this docket and in Docket No. W-
8 01384A-07-0314, a copy of the ADEQ AOC;
- 9 • that the Company's request for approval of a \$3.35 surcharge per customer per month be
10 denied;
- 11 • that the Company be authorized to engage in any transaction and to execute any
12 documents necessary to effectuate the authorization granted herein;
- 13 • that the Company file, within 60 days of the execution of any documents related to this
14 transaction, with the Commission's Docket Control, as a compliance item in this docket, a
15 copy of the executed loan agreement;
- 16 • that any authorization granted herein to incur long-term debt that remains unused as of
17 December 31, 2011, shall terminate on that date; and
- 18 • that the Company file, within 90 days of the effective date of this Decision, with the
19 Commission's Docket Control, as a compliance item in this docket, documentation from
20 the Arizona Department of Water Resources ("ADWR") indicating that the Company has
21 submitted a satisfactory water system plan and that the Company is in full compliance
22 with ADWR requirements.

23 22. On January 26, 2009, the Company filed objections to Staff's recommendation that the
24 Company's proposed surcharge be denied because the Company did not believe that it had sufficient
25 cash flow to service the proposed long-term debt.

26 23. On February 2, 2009, the Applicant filed a further response withdrawing its objections
27 to Staff's recommendation that the proposed surcharge be denied in this proceeding, and indicating
28 that the Company would file a rate application wherein the proposed surcharge could be fully
evaluated.

24 24. Staff's recommendations herein are reasonable and should be adopted.

25 CONCLUSIONS OF LAW

26 1. The Company is a public service corporation within the meaning of Article XV of the
27 Arizona Constitution and A.R.S. §§ 40-252, 40-301 and 40-302.

28 2. The Commission has jurisdiction over the Company and of the subject matter of the
Application.

3. Notice of the Application was given in accordance with the law.

4. Staff's recommendations are reasonable and should be adopted.

5. The encumbrance approved herein is for the purposes stated in the Application and is reasonably necessary for those purposes.

6. The financing approved herein is for lawful purposes within the Company's corporate powers, is compatible with the public interest, with sound financial practices, and with the proper performance by the Company of service as a public service corporation, and will not impair the Company's ability to perform that service.

7. The financing approved herein is for the purposes stated in the Application and is reasonably necessary for those purposes, and such purposes are not wholly or in part, reasonably chargeable to operating expenses or to income.

ORDER

IT IS THEREFORE ORDERED that the Application of the Dells Water Company, Inc. for authority to enter into long-term debt not to exceed \$30,000, at an interest rate not to exceed 6.75 percent per annum and for a period no longer than 22 years, shall be, and is hereby, approved.

IT IS FURTHER ORDERED that such authority is expressly contingent on the Dells Water Company, Inc.'s use of the proceeds for the purposes set forth in its Application.

IT IS FURTHER ORDERED that the Dells Water Company, Inc. is hereby authorized to engage in any transactions and to execute any documents necessary to effectuate the authorization granted hereinabove.

IT IS FURTHER ORDERED that the Dells Water Company, Inc. shall file, within 60 days of the execution of the loan documents, with the Commission's Docket Control, as a compliance item in this docket, copies of all executed documents associated with the financing authorized herein.

IT IS FURTHER ORDERED that the financing approved herein shall not guarantee or imply any specific treatment of any capital addition for rate base or rate making purposes.

IT IS FURTHER ORDERED that the Company shall file, by December 31, 2009, a copy of the ADEQ AOC for the construction of its storage facilities with the Commission's Docket Control,

as a compliance item in this docket, and as a compliance item in Docket No. W-01384A-07-0314 in accordance with the requirements of Decision No. 70102.

IT IS FURTHER ORDERED that any authorization granted herein with respect to the long-term debt not utilized by the Dells Water Company, Inc. as of December 31, 2011, shall terminate.

IT IS FURTHER ORDERED that the Dells Water Company, Inc. shall file, within 90 days of the effective date of this Decision, with the Commission's Docket Control, as a compliance item in this docket, documentation from ADWR indicating that the Company has submitted a satisfactory water system plan and that the Company is in full compliance with ADWR requirements.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2009.

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

MES:db

1 SERVICE LIST FOR: THE DELLS WATER COMPANY, INC.

2 DOCKET NO.: W-01384A-08-0048

3

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